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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,958	08/07/2003	Kouji Iwasaki	S004-5088	1216

7590 12/29/2004

ADAMS & WILKS  
31st Floor  
50 Broadway  
New York, NY 10004

EXAMINER
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FERNANDEZ, KALIMAH

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/635,958

Applicant(s)

IWASAKI, KOUJI

Examiner

Kalimah Fernandez

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 8-9-02. It is noted, however, that applicant has not filed a certified copy of the Japanese application as required by 35 U.S.C. 119(b).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,118,122 issued to Koyama et al.

3. Koyama et al disclose a focusing charged particle beam device (col.1, lines 4-7).

4. Koyama et al disclose a charged particle source (9).

5. Koyama et al disclose a focusing lens system (2).

6. Koyama et al disclose a blanking electrode (3).
7. Koyama et al disclose a deflection electrode (8).
8. Koyama et al disclose a sample stage (15).
9. Koyama et al disclose a gas gun (13).
10. Koyama et al disclose a sample stage drive means comprises<sup>ing</sup> a mechanism capable of movement in three dimensions and capable of tilting in two axial directions (col.3, lines 3-8). It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. *In re Hutchison*, 69 USPQ 138.
11. As per claim 2, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. *In re Hutchison*, 69 USPQ 138. The recitation " it is made possible to carry out processing of a slice accurately and perpendicularly in all directions for a pattern of a penetrating structure of an electron beam exposure mask" has not been given patentable weight because it is not a positive limitation. Nevertheless, Koyama et al disclose tilting the sample in two axial directions; thus, Koyama et al disclose the capability of setting a sample at a tilt angle as recited.

12. As per claim 3, Koyama et al disclose a means for data storage and controlling tilt angle (19). It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. *In re Hutchison*, 69 USPQ 138.

13. As per claim 4, Koyama et al disclose a gas gun for spraying gas for assist etching of a mask material, or deposition gas (col.3, lines 9-34).

### ***Conclusion***

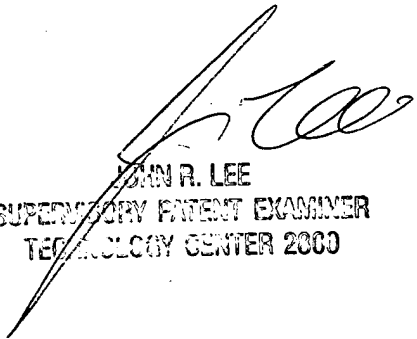
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Pat No 5,683,547 issued to Azuma et al; US Pat 5,029,250 issued to Komatsu et al; and US Pat No. 6,348,689 issued to Koyama. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kalimah Fernandez whose telephone number is 571-272-2470. The examiner can normally be reached on Mon-Tues 6:30-3:30; Wed-Thurs 8-5 and Fri.9am-6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R Lee can be reached on 571-272-2477. The

fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF



JOHN R. LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2000